

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2011-002723

02/10/2012

JUDGE DAVID J. PALMER

CLERK OF THE COURT

S. Stewart

Deputy

IN RE THE MARRIAGE OF  
AMY JO DAURIO

J VINCENT GONZALEZ

AND

STEVEN L DAURIO

PHILIP A SELOW

DOCKET-FAMILY COURT CCC  
FAMILY COURT SERVICES-CCC

**DECREE OF DISSOLUTION**

The Evidentiary Hearing in this matter was conducted on December 14, 2011. During the proceedings, the Court heard from the witnesses, including the parties. The Court has since considered the evidence, including the demeanor of the witnesses, reviewed the exhibits as well as the case history, and considered the parties' arguments.

After significant deliberation, the Court makes the following findings and enters the following orders:

**THE COURT FINDS** as follows:

- A. At the time this action was commenced at least one of the parties was domiciled in the State of Arizona and that said domicile had been maintained for at least 90 days prior to the filing of the Petition for Dissolution of Marriage.
- B. The conciliation provisions of A.R.S. § 25-381.09 have either been met or do not apply.
- C. The parties were married on March 22, 2003. By operation of law, the marital community is deemed to have terminated on May 14, 2011.
- D. The marriage is irretrievably broken and there is no reasonable prospect for reconciliation.

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- E. There is 1 minor child, common to the parties, namely: Ayden (DOB: 12/07/2005).
- F. Mother is not pregnant.
- G. This was not a covenant marriage.
- H. To the extent that it has jurisdiction to do so, the Court has considered, approved and made provision for the maintenance of either spouse and the division of property and debts.

Based on the above,

**DISSOLUTION OF MARRIAGE**

**IT IS ORDERED** dissolving the marriage of the parties and restoring each party to the status of a single person.

**CUSTODY AND PARENTING TIME**

**Jurisdictional Findings**

**THE COURT FINDS** that the parties and the minor child have resided in Arizona continuously for at least the six months preceding the filing of the petition for dissolution. This Court, therefore, has jurisdiction as Arizona is the “home state” of the minor child. *See* A.R.S. § 25- [1031](#).

**Best Interest Findings: A.R.S. § 25-403**

The Court has considered the agreement of the parties and the factors under A.R.S. § 25-403. The parties have stipulated to a finding that the agreed upon plan is in the best interests of the minor child; specifically they have agreed to share joint legal custody of Ayden and to share an equal parenting time plan as recommended by Dr. Marlene Joy in a limited focused assessment as agreed to by the parties.

**THE COURT FURTHER FINDS** that there is no history of domestic violence (A.R.S. § 25-403(E) and 25-403.03), any drug related offenses of either party (A.R.S. § 25-403.04) and any sexual offenses (A.R.S. § 25-403.05) sufficient to preclude the award of joint legal custody as agreed.

Based upon the foregoing and in accordance with the best interests of the minor child,

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**THE COURT FURTHER FINDS** that it is in Ayden's best interest that Mother and Father be awarded joint legal custody of Ayden (DOB: 12/07/2005).

**IT IS THEREFORE ORDERED** awarding Mother and Father joint legal custody of Ayden (DOB: 12/07/2005).

**Custody Terms**

**Parental Access To Records And Information-** Both parents are entitled to have equal access to documents and other information concerning each child's education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of the records or from the other parent. A person who does not comply with a reasonable request shall reimburse the requesting parent for court costs and attorney fees incurred by that parent to force compliance with this subsection. A parent who attempts to restrict the release of documents or information by the custodian, without a prior court order, is subject to appropriate legal sanctions.

**Educational Arrangements-** Both parents have the right to participate in school conferences, events, and activities (including extra-curricular), and the right to consult with teachers and other school personnel.

**Medical And Dental Arrangements-** Both parents have the right to authorize emergency medical/dental treatment, if needed, and the right to consult with physicians and other medical practitioners. Both parents shall advise the other parent immediately of any emergency medical/dental care sought for each child, to cooperate on health matters pertaining to each child and to keep one another reasonably informed regarding the status of each child's health. Both parents shall keep each other informed as to names, addresses, and telephone numbers of all medical/dental care practitioners.

**Parental Communication-** It is in the furtherance of each child's best interests for the parents to confer and for the views of each parent to be considered. There shall be communication between the parents to address day-to-day and more significant issues. The parents shall develop their communication by utilizing e-mail as their primary method for communication. This shall afford a method that ensures both accountability and verifiability. Both parties shall maintain and regularly review their e-mail accounts. They shall each respond in a timely fashion, even if such response is merely to acknowledge the receipt of information. Each should print copies of all e-mails received and sent so that if an issue arises in the future that has been addressed through e-mail, each party shall have proof as to what was communicated.

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**Relocation-** Neither parent shall relocate the residence of the child outside of the state of Arizona or to a distance greater than 100 miles from the current residential locations unless that parent first secures the written consent of the other or secures a court order authorizing the move.

**Mediation Or Conciliation Services:** The parties shall participate in mediation through a private mediator or through this Court's Conciliation Services to resolve any disputes, problems or proposed changes regarding this child custody order or parenting time before seeking further relief from the Court.

**Decision Making Authority-** It is anticipated that parental decisions shall be required for major issues in raising the child and in meeting on-going needs. If/when they arise, the parents shall address the issues. Each shall give good faith consideration to the views of the other and put forth best efforts to reach a consensus decision. If the decision involves medical or schooling issues, the parties may further elect to seek input from treating physicians or educators. Both parents shall be provided with such input.

**Parenting Time**

As a term of the overall custody orders, parenting time shall be exercised as follows:

**Regular Access-** 5/2-2/5 plan whereby Father shall care for Ayden every Monday and Tuesday until return to school Wednesday (or 9:00 a.m. or if a non-school day); Mother every Wednesday and Thursday until the return to school Friday (or 9:00 a.m. if a non-school day); followed by alternating weekends for each parent from Friday after school (or 9:00 a.m. if a non-school day) until the return to school Monday (or 9:00 a.m. if a non-school day).

**Holiday Schedule-**

Christmas/Winter Break: In odd years with Father from after school December 16 until 11:00 a.m. December 25; with Mother from 11:00 a.m. December 25 until the return to school after the New Year. In even years with Mother from after school December 15 until 11:00 a.m. December 25; with Father from 11:00 a.m. December 25 until the return to school after the New Year.

Thanksgiving: With Mother in odd years and Father in even years from Wednesday after school until Sunday at 6:00 p.m. If this arrangement would cause one parent to have three weekends in a row, the third weekend must be transferred to the other parent and the alternating weekend rotation pursued from there.

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Easter: With Mother in even years and Father in odd years from 9:00 a.m. until 2:00 p.m.

Spring Break: (Monday 9:00 a.m. until Friday 2:30 p.m.) with Father annually for his regularly scheduled weekend and the weekday break. Mother shall care for Ayden for her regularly scheduled weekend.

Fall Break: (Monday 9:00 a.m. until Friday 2:30 p.m.) with Mother annually for her regularly scheduled weekend plus the weekday break. Father shall care for Ayden for his regularly scheduled weekend.

Mother's Day: With Mother from 9:00 a.m. Sunday to 9:00 a.m. Monday.

Father's Day: With Father from 9:00 a.m. Sunday to 9:00 a.m. Monday.

July 4<sup>th</sup>: With Father in odd years and Mother in even years from 9:00 a.m. July 4 until 9:00 a.m. July 5.

Halloween: With Mother in odd years and Father in even years from 2:30 p.m. until 8:30 p.m.

Monday legal holidays: The regularly scheduled weekend shall be extended until Monday at 6:00 p.m.

Ayden's Birthday (12/07): Per the regular schedule. Father will organize/pay for Ayden's birthday party with his friends in odd years and Mother in even years.

Parent's Birthdays (Mother: 10/08; Father: 01/13): Ayden will celebrate with the birthday parent from 2:30 p.m. until 7:30 p.m.

**Summer/Vacation-**

Each parent may vacation with Ayden for two non-consecutive one week blocks in 2012. Starting in 2013, the two weeks may be taken consecutively or non-consecutively. Each parent must notify the other in writing no later than May 1 annually of his/her requested vacation dates. In the event of overlapping requests, Father's wishes shall take precedence in even years and Mother's in odd years.

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**IT IS FURTHER ORDERED THAT:**

- Exchanges shall take place curbside with neither parent approaching the other parent or the other parent's car; and without communication other than a civil greeting.
- Neither parent shall openly videotape the other parent in Ayden's presence.
- Parental communication shall occur via email which must reflect civility, avoid emotionally laden words, remain focused on Ayden and checked daily (unless on vacation or hospitalized). In the event of an emergency or urgent situation, telephone contact must occur. Replies to the other parent's request for information must occur within 48 hours.
- Both parents shall attempt to focus on improving their parental roles rather than the demise of their marital roles.
- Both parents shall be listed as emergency contacts on any forms or lists that require such contact information such as, but not limited to, educational, activity, childcare and/or medical provider(s).
- If the access parent is unavailable or unable to care for Ayden for four or more consecutive waking hours, the non-access parent must automatically be offered the opportunity to be the care-provider of choice. This does not apply to vacation or extended holidays, nor should it be calculated to include the time Ayden is in extracurricular activities or in school.
- Each parent shall refrain from discussing custody and other legal issues with Ayden.
- Each parent shall encourage love and respect between Ayden and the other parent and that neither shall do anything which may undermine Ayden's relationship with the other parent.
- Both parents shall protect Ayden from exposure to animosity toward or disparagement of the other parent, including by other family members, friends, or associates.

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- Each parent shall notify the other of any change of address and/or telephone number at least three days in advance of the change.
- Ayden shall be allowed and encouraged to speak with the non-custodial parent in private between 7:00-7:30 p.m. on any days he has not seen that parent.
- Both parents shall promptly notify the other of any emergency or other important event that involves Ayden, to cooperate fully on health matters pertaining to Ayden and to keep each other reasonably informed as to names, addresses, and telephone numbers of all medical, dental and mental health practitioners.
- If either parent chooses to have Ayden travel out of state, the non-participating parent shall be informed at least three days in advance of all pertinent information (i.e., the itinerary, address, phone number, etc.) If a parent is traveling out of state without Ayden, the custodial parent should be provided reliable means of telephonic access should an emergency arise.
- Both parents shall consult and seek agreement with the one another regarding any extra activity which may affect the other parent's access.
- Both parents shall exert their best efforts to work cooperatively in future plans consistent with Ayden's best interests and to amicably resolve such issues as they arise.
- If major changes arise which make this parenting plan no longer feasible, the parents shall re-negotiate their plan with a Parenting Coordinator prior to any changes taking place or any court action being initiated.
- While a dispute is being resolved, neither parent shall deviate from this plan or act in such a way that is inconsistent with the terms of this plan.

**CHILD SUPPORT**

**THE COURT FINDS** that the relevant financial factors and the discretionary allowances and adjustments which the Court will allow for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the Child Support Worksheet, which the Court hereby incorporates and adopts as its findings with respect to child support.

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In applying these findings under the Arizona Child Support Guidelines,

**THE COURT FURTHER FINDS** that no deviation is appropriate regarding the obligation to pay child support.

**IT IS THEREFORE ORDERED** that Father shall pay to Mother as and for child support the sum of **\$705.53** per month, payable through the Support Payment Clearinghouse on the 1st day of each month commencing January 1, 2012 by Wage Assignment. In ordering this start date, the Court finds that Husband has been paying a benefit to Wife at least equal to that amount by paying all the expenses associated with the marital residence, including a first and second mortgage and utilities, and that during that time frame Mother has had exclusive use and possession of the residence for virtually the entire period of separation of the parties during the pendency of these proceedings. The Court further notes that the home is Husband's sole and separate property.

**LET THE RECORD REFLECT** an Order of Assignment is initiated electronically by the above-named deputy clerk.

**IT IS FURTHER ORDERED** that Father shall complete and submit to the Court the *Current Employer Information* form attached hereto.

**IT IS FURTHER ORDERED** that at any time an Order of Assignment is not paying the child support obligation in full, he shall make full and timely payments directly to the Support Payment Clearinghouse in accordance with the attached "Instructions for Making Support Payments through the Clearinghouse."

All payments shall be made through the Support Clearinghouse via an automatic Order of Assignment issued this date. Father is advised that until such time as the Order of Assignment becomes effective, he has an affirmative obligation to pay the child support directly to the Support Clearinghouse.

All obligations for child support for each child shall terminate upon a finding of this Court that the child has attained the age of 18 years, or is otherwise emancipated. If any child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which that child is actually attending high school but only until the child reaches 19 years of age. Support for special needs children may continue past the age of 18 based on a finding of this Court. Provisions for health insurance and non-insured health expenses for the children, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

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Pursuant to A.R.S. § 25-503.I, the right of a parent, guardian or custodian to receive child support payments as provided in this Order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

**Insurance and Unreimbursed Medical Expenses**

**IT IS FURTHER ORDERED** that Mother shall provide medical insurance for the benefit of the parties' minor child, and Husband provide dental and vision insurance for the minor child, and each party shall provide insurance cards and claim filing information/forms to the other parent relative to the coverage they provide. All medical, dental and orthodontia expenses incurred for the health and protection of the child not covered by insurance shall be paid 65% by Father and 35% by Mother.

With regard to unreimbursed medical, dental, and vision expenses,

**IT IS ORDERED** that except for good cause shown, any request for payment or reimbursement of uninsured medical, dental and/or vision costs must be provided to the other parent within 180 days after the date the services occur. The parent responsible for payment or reimbursement must pay his or her share, as ordered by the Court, or make acceptable payment arrangements with the provider or person entitled to reimbursement within 45 days after receipt of the request.

Both parents should use their best efforts to obtain services that are covered by the insurance. A parent who is entitled to receive reimbursement from the other parent for medical costs not covered by insurance shall, upon request of the other parent, provide receipts or other evidence of payments actually made.

**Tax Deduction For Ayden As A Dependent**

**IT IS ORDERED** that the parties may claim the eligible dependent as follows: Father in tax years 2011 and 2012 and Mother in tax year 2013, with that pattern to repeat beginning in tax year 2014.

**IT IS FURTHER ORDERED** that if Father is not current in the total Court-ordered child support obligation for the current calendar year and/or any Court-ordered arrearage payment due during the calendar year for which the exemption is to be claimed but nevertheless claims the child for tax purposes, he shall pay directly to the Support Payment Clearinghouse 100 percent of any and all tax refunds that he receives, which shall be applied first towards his current child support obligation, and then towards any arrearage.

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**Exchange Of Income Information**

**IT IS FURTHER ORDERED** that the parties shall exchange income information on every 24 months. Said financial information shall include, but not be limited to: personal tax returns with all schedules, affidavits of financial information, earning statements and other such documentation necessary to establish or prove the income of either party. In addition, at the time of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

**SPOUSAL MAINTENANCE**

Mother seeks an award of spousal maintenance in the amount of \$987.00 per month for a term of 9 years. Father opposes the award, asserting that Mother does not qualify for an award of spousal maintenance.

The determination of spousal maintenance is controlled by A.R.S. § 25-319. The threshold question is entitlement, which is controlled by subsection (A) of the statute. It provides as follows:

In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, the Court may grant a maintenance order for either spouse for any of the following reasons if it finds that the spouse seeking maintenance:

1. Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs.
2. Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient.
3. Contributed to the educational opportunities of the other spouse.
4. Had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

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**THE COURT FINDS**

that Mother has not established a statutory basis for entitlement to an award of spousal maintenance. Her claim is therefore denied and neither party is entitled to an award of spousal maintenance.

**DIVISION OF PROPERTY AND DEBTS**

After the conclusion of the trial in this matter, which included testimony and evidence and some apparent agreements regarding the division of community property and debts, but prior to the issuance of this ruling, Father filed a Motion alleging the subsequent theft of certain items of marital property by Mother that was factored into the division of assets and debts as discussed and agreed to by the parties. Father also asks that an evidentiary hearing be set by the Court to resolve that issue. Mother filed a Response to this pleading, and Father a Reply to the Response.

Based upon the allegations of Father's Motion,

**EVIDENTIARY HEARING SETTING**

**IT IS ORDERED** setting the matter for an Evidentiary Hearing in this Division on **May 14, 2012 at 2:00 p.m. (90 minutes allowed)** relative to the allegations of Father's Motion and as to the ultimate division of community debts and assets;

**IT IS FURTHER ORDERED** holding in abeyance the issue of division of community assets and debts and any award of attorney's fees to either party until after the conclusion of that hearing.

NOTE: All court proceedings are recorded by audio method and not by a court reporter. Any party may request the presence of a court reporter by contacting this division five (5) business days before the scheduled hearing.

**IT IS FURTHER ORDERED** with regard to discovery and disclosure requirements:

1. Both parties shall exchange updated disclosure statements required by Rules 49, 50 and 91, Arizona Rules of Family Law Procedure, including an exchange of all relevant information, documents and exhibits at least 30 days prior to the hearing.

2. All depositions and discovery contemplated by Rules 49 through 65, Arizona Rules of Family Law Procedure, shall be completed and any motions regarding discovery shall be filed at least 15 days prior to the hearing.

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3. Counsel and both parties shall personally meet, face to face, at least 20 days prior to the hearing to conduct settlement discussions, exchange all exhibits, and discuss the resolution and narrowing of all procedural and substantive issues in this case.

4. The parties shall promptly comply with all requests for relevant information in this case. In this regard, the parties shall sign all necessary consents and releases reasonably required to obtain any relevant documents or records from any financial institution, company or business, medical or health care provider, or employer possessing any relevant and discoverable information.

Failure of a party to appear may result in the Court allowing the party who does appear to proceed by default. Failure of both parties to appear may result in this action being dismissed.

Pursuant to Rule 77(C)(5), Arizona Rules of Family Law Procedure, each party will be allowed 1/2 of the available time to present all direct, cross, redirect examination and any argument. The parties are expected to complete the trial in the allotted time, and the time will not be extended absent a motion granted by the Court and filed at least 30 days prior to the hearing setting forth good cause to extend the time and specifically including a list of each and every witness who will testify and an estimate of time and subject matter of the expected testimony for each witness.

**IT IS FURTHER ORDERED** that the parties shall file and provide this Division with a copy of a Joint Pre-hearing Statement pursuant to Rule 76, Arizona Rules of Family Law Procedure, no later than 5 days prior to the hearing.

**IT IS FURTHER ORDERED** that the Joint Pre-hearing Statement shall include the following attachments:

1. A current Affidavit of Financial Circumstances.
2. A current Parent's Worksheet for Child Support Amount completed by each party pursuant to the Statewide Child Support Guidelines.
3. If there are disputed custody, access or visitation issues, a specific proposal for custody and visitation by each party.

**IT IS FURTHER ORDERED** that the failure of counsel or any party to appear at the time of hearing, or to timely present the Joint Pre-hearing Statement in proper form, including each and every attachment required, shall, in the absence of good cause shown, result in the

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imposition of any and all available sanctions pursuant to Rule 76(D) and 91(Q), Arizona Rules of Family Law Procedure, including proceeding to hear this matter by default based upon the evidence presented by the appearing party.

**IT IS FURTHER ORDERED** the parties shall deliver any exhibits and an exhibit inventory to the clerk of this division, and not place in the division mailbox, for marking **no later than five Court business days prior to the hearing**, not including weekends, holidays or the day of the proceeding. All exhibits presented shall have been exchanged between the parties. Duplicate exhibits shall not be presented. **Absent good cause, any exhibits not submitted at least five (5) business days prior to the hearing may not be accepted and/or marked.** The parties shall also provide the adverse party with a separate copy of all exhibits.

**IT IS FURTHER ORDERED** that the parties shall indicate in the Joint Pre-hearing Statement which exhibits they have agreed will be admissible at hearing as well as any specific objections that will be made to any exhibit if offered at hearing which is not agreed to be admitted. Reserving all objections to the time of hearing will not be permitted. At the time of hearing all exhibits that the parties have agreed will be admitted and all exhibits for which no specific objection is stated in the Joint Pre-hearing Statement shall be summarily admitted.

**NOTICE**

You may request conclusions of fact and law on the following issues, if they are contested: the issues of child custody, relocation requests, spousal maintenance, community property, community debt, and child support. To request conclusions of fact and law, you must file a written request with the court before the trial or the evidentiary hearing. If you make a written request before the trial or evidentiary hearing, the court will make conclusions of fact and law as part of the final decision.

If any party asks the court to make findings of fact and law on any issue, each party must file written proposed findings of fact and law on those issues. The proposed findings also must be submitted in an electronic form that is editable, preferably Microsoft Word. The proposed findings must be submitted with the Pretrial Statement.

Counsel and the parties are reminded of their obligation to give prompt notice of any settlement to the Court as required by Rule 70, Arizona Rules of Family Law Procedure. Should the parties reach a full agreement prior to the date of the hearing, the Court will consider a motion to vacate the hearing **ONLY AFTER A SIGNED STIPULATED AGREEMENT IS PRESENTED TO THE COURT.**

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**IT IS FURTHER ORDERED** signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

DATED the 13<sup>th</sup> day of February 2012

/S/: HONORABLE DAVID J. PALMER

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JUDGE OF THE SUPERIOR COURT

**FILED:** Exhibit Worksheet; Child Support Order; Child Support Worksheet

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

Attachments:

PHILIP A SEFLOW: Current Employer Information, Non IV-D Payment Instructions